SUPREME COURT OF THE UNITED STATES.

No. 211.

F. MANDLEBAUM AND A. KLAUBER, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE UNITED STATES IN THE TERRITORY OF NEVADA.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEVADA.

INDEX.

	Original.	Print.
A.		
Answer	8	3
Answer, supplemental	10	5
Answer, amended	13	6
Appeal, notice of	19	8
Appeal, undertaking on	20	9
C.		
Complaint	3	2
Complaint, amended	12	6
Certificate, clerk district court	22	9
Certificate, clerk supreme court	24	11
Citation	2	1
F.		
Findings of the court	17	8
J.		
Judgment in the district court	18	8
Judgment in the supreme court	23	10
Journal entry, leave to file supplemental answer	10	4
parties allowed to amend pleadings	11	5
assessment roll declared regular	11	5
S.		
Summons	6	3
W.		
Writ of error	2	1

1 *Citation.*

TERRITORY OF NEVADA:

FRANK MANDLEBAUM AND ABRAM KLAUBER, plaintiffs in error,
vs
THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, defendants in error.

United States of America to the people of the United States and Territory of Nevada, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington City, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Nevada, wherein Frank Mandlebaum and Abram Klauber are plaintiffs in error and the people of the United States and Territory of Nevada are defendants in error, to show cause, if any there be, why the decision in the said writ of error mentioned should not be corrected and speedy justice should not be done to the party in that behalf.

Witness the Honorable George Turner, chief justice of the supreme court of the Territory of Nevada, this the day of July, in the year of our Lord one thousand eight hundred and sixty-four.

GEO. TURNER, *Ch'f Jus. of Nevada.*

Due service of the foregoing is hereby acknowledged.
July 12th, 1864.

THOS. J. HAYDON,
Pros. Att'y for Ormsby County, N. T.

Filed July 12th, 1864.

ALFRED HELM, *Clerk.*

2 TERRITORY OF NEVADA:

F. MANDLEBAUM AND A. KLAUBER, pl'ff in error,
vs.
THE PEOPLE OF THE UNITED STATES IN THE TERRITORY of Nevada, def'ts in error.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the supreme court, holden at Carson City, in and for the Territory of Nevada, greeting:

Because that in the record and process, and also in the rendering of judgment, in a suit before you or some of you, between F. Mandlebaum and A. Klauber, plaintiffs in error, and the people of the United States in the Territory of Nevada, defendants in error, in a civil action to recover one thousand five hundred and twenty-two dollars, and district attorney's fees taxed at two hundred and twenty-eight 30-100 dollars, also costs in the court below taxed thirty-six 50-100 dollars, together with costs in the said supreme court of the Territory of Nevada, taxed at sixty dollars, a manifest
3 error has intervened, to the great damage of the said F. Mandlebaum and A. Klauber, the said pl'ffs in error, as in their complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if

judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court, at Washington aforesaid, the seventh day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

ALFRED HELM,
Clerk of the Supreme Court of Nevada Territory.

Filed July 8th, 1864.

ALFRED HELM, *Clerk.*

4 *Complaint.*

UNITED STATES OF AMERICA,
Territory of Nevada, County of Ormsby:

District court, 2nd judicial district.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada
vs.
F. MANDLEBAUM AND A. KLAUBER, COMPOSING FIRM OF Mandlebaum & Klauber, and the real estate and improvements hereinafter described.

The people of the United States and Territory of Nevada, by M. D. Larrowe, district attorney of the second judicial district, complains of said Mandlebaum & Klauber and the following personal property, to wit: extra amount of goods of different kinds in store occupied by said Mandlebaum & Klauber, on Carson street, in Carson City, said county and Territory, assessed at seventy thousand($70,000) dollars; twenty tons of hay, assessed $800; goods in store at Kinkead & Harrington's, assessed at six thousand five hundred dollars, ($6,500;) lumber and timber for barn on east side of the plaza in said city, assessed at $600, and one hundred (100) tons of hay in Mrs. Ormsby's storehouse, in said city, assessed at four thousand ($4,000) dollars. All of the above being of the property of said Mandlebaum & Klauber.

And for cause of action say that between the first Monday of March and the first Monday of August, A. D. 1862, in the county of Ormsby, in the Territory of Nevada, O. H. Pierson, then and there being county assessor of said county, did duly assess and put down upon an assessment roll all the
5 property, real and personal, in said county subject to taxation, and that said assessment roll was afterwards submitted to the board of equalization of said county, and was by said board duly equalized as provided by law. That said Mandlebaum & Klauber were then and there owners of, and that there was duly assessed to them, the above-described real estate, improvements upon real estate, and certain personal property, and that upon such property there has been duly levied for the fiscal year A. D. 1862, a federal tax of eighty-one 90-100 dollars, a territorial tax of three hundred and twenty-seven 60-100 dollars, and a county tax of twelve hundred and twenty-eight 50-100 dollars, amounting in the whole to sixteen hundred and thirty-eight dollars, all of which is due and unpaid; of which amount dollars was duly levied against the real estate, and dollars against the improvements aforesaid, and sixteen hundred and thirty-eight

dollars on the personal property of said Mandlebaum & Klauber. Wherefore said plaintiff prays judgment against said Mandlebaum & Klauber, for the sum of sixteen hundred and thirty-eight dollars, and a separate judgment against said real estate and improvements for the sum of dollars, and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes and of this action.

6 M. D. LARROWE,
District Att'y of the 2nd Judicial District, Territory of Nevada.

Endorsed: Filed April 16th, 1863.

ALFRED HELM, *Clerk.*

Summons.

District court, 2nd judicial district.

UNITED STATES OF AMERICA,
Territory of Nevada, County of Ormsby:

The people of the United States in the Territory of Nevada to F. Mandlebaum and A. Klauber, composing firm of Mandlebaum & Klauber, greeting:

You are hereby required to appear in an action commenced against you and the real estate and improvements thereon, hereinafter described, by the people of the United States and Territory of Nevada, as plaintiffs, in the district court of the 2nd judicial district, in and for the county of Ormsby, Territory of Nevada, and answer the complaint therein which is on file in said court, on the 27th day of April, 1863, at o'clock m., or judgment will be taken against you and the real estate and improvements thereon herein described according to the prayer of said complaint.

This action is brought to recover the sum of sixteen hundred and thirty-eight dollars, duly levied on personal property, assessed to you for
7 federal, territorial, and county taxes for the fiscal year A. D. 1862, with ten per cent. added thereto, as required by law, upon the certain real estate and improvements thereon situated in the county of Ormsby, Territory of Nevada, described as follows, to wit: Goods, wares, and merchandize as described in complaint, of the value of eighty-one thousand nine hundred dollars, ($81,900,) the tax upon which amounts to sixteen hundred and thirty-eight dollars, ($1,638.)

And you are further notified that if you fail to appear and answer the said complaint, the said plaintiffs will take judgment against you and the said real estate and the improvements thereon, for the said sum of sixteen hundred and thirty-eight dollars, with ten per cent. added, and the costs of this action.

In testimony whereof, I have hereunto set my hand and the seal of said district court this 17th day of April, A. D. 1863.

[L. S.] ALFRED HELM, *Clerk.*

Endorsed: Filed April 18th, 1863.

ALFRED HELM, *Clerk.*

8 *Answer.*

In the district court, 2nd judicial district.

THE PEOPLE, &C.,
vs.
MANDLEBAUM & KLAUBER.

The defendant, for answer to the complaint herein, deny that there is, or was at the institution of this suit, any sum of money due or owing by the defendants to the pl'ffs on account of said tax assessment or any other

tax assessment, because, they say, that in the year 1862 they were legally assessed for all their property of every kind whatsoever by the assessor of said county, and all tax to which said property was liable under any law was then and there by said assessor duly charged to the defendants, to the amount of $140 00; and that afterwards and before the institution of this suit they, the def'ts, fully paid to the tax collector of said county the said sum of money in full discharge of all taxes in any manner or under any law chargeable to the def'ts in said county for said year, which said sum was then received by the said tax collector for the plaintiffs.

And the defendants, further answering, deny that there is, or was at the institution of this suit, any money whatever due or owing to the plaintiffs from the defendants on account of any such assessment as is alleged in said complaint to have been made on any goods of any kind whatsoever, or any lumber or timber, or any hay for said year of 1862, because, they say, that prior to the institution of this suit they paid to the tax collector of
9 said , who then received the same for the plaintiffs, all sums of money due or owing from them to plaintiffs on account of any assessments made at the time as alleged in said complaint.

And the defendants, for further answer, say there was fraud in the alleged assessment in this, that prior thereto, and within the time mentioned in said complaint in the year 1862, an assessment had been duly made against them of all their property of every kind whatsoever in said county, by which said property was charged with all the taxes to which the same was in any manner liable; all of which taxes the defendants duly paid to the tax collector of said county prior to the institution of this suit, and they believe that the pretended assessment mentioned in the complaint was not in pursuance of the statutes, and was gotten up by the agents of the plaintiffs with intent to defraud defendants.

The defendants having fully answered, ask to be discharged with their costs.

W. H. BRUMFIELD, *Att'y for Defendants.*

NEVADA TERRITORY, *Ormsby County, ss:*

A. Klauber, one of the above-named defendants, being duly sworn, upon his oath says the foregoing answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes, *and as to those matters he believes,* it to be true.

A. KLAUBER.

Subscribed and sworn to before me this 10th day of August, 1864.

ALFRED HELM, *Clerk.*

Endorsed: Filed August 10th, 1863.

ALFRED HELM, *Clerk.*

10 *Journal entry.*

THE PEOPLE, &c.,
vs.
MANDLEBAUM & KLAUBER.

MONDAY, *August* 24, 1863.

On motion of Wm. H. Brumfield, esq., leave was granted defendants to file supplemental answer forthwith. Cause continued by consent.

Supplemental answer.

In the district court.

THE PEOPLE, &c.,
vs.
MANDLEBAUM & KLAUBER.

And now come the defendants, and with leave of the court, for their answer supplemental to their answer heretofore filed, answering deny on information and belief that there ever was any such assessment made as is alleged in said complaint.

W. H. BRUMFIELD, *Att'y for Def'ts.*

TERRITORY OF NEVADA, *Ormsby County, ss:*

A. Klauber, being duly sworn, upon his oath says the foregoing supplemental answer is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

A. KLAUBER.

Subscribed and sworn to before me this 24th day of August, A. D. 1863.
[L. S.] S. D. KING, *Notary Public.*

Endorsed: Filed August 24th, 1864.

ALFRED HELM, *Clerk.*

11 *Journal entry.*

ORMSBY COUNTY, &c.,
vs.
MANDLEBAUM & KLAUBER.

JANUARY 5, 1864.

The above-mentioned cause being set for hearing on this day, now came on before the court, and on motion of plaintiffs' attorney, plaintiffs was granted until to-morrow morning, 6th inst., to amend their complaint herein, and defendants also allowed to amend their answer. And said amendments being considered made, counsel for both plaintiffs and defendants were fully heard and matters therein submitted and taken under advisement by the court.

Journal entry.—Assessment roll and verification sufficient.

THE PEOPLE, &c., OF ORMSBY COUNTY
vs.
MANDLEBAUM & KLAUBER.

JANUARY 6, 1864.

In this cause the counsel for the plaintiff and also counsel for the defendants having been fully heard on a former day, and both parties having been allowed to amend their pleadings, and the matters heard being fully and carefully considered by the court, it is now decided that the assessment roll is sufficient and regular; that the verification is sufficient. And plaintiffs having filed their amended complaint, defendants are allowed until Monday next to file amended answer.

12 *Amended complaint.*

TERRITORY OF NEVADA, *County of Ormsby:*

District court, 2nd judicial dis't.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, plaintiffs,
vs.
F. MANDLEBAUM AND A. KLAUBER, COMPOSING FIRM OF Mandlebaum & Klauber, defendants.

Plaintiffs, by leave of the court, amend their complaint and allege that between the first Monday of August, 1862, and the last Saturday in October, 1862, said O. H Pierson, then being assessor of Ormsby County, assessed the property described in their original complaint; that said property had not been assessed in the regular list of assessments, and that said assessor did duly enter the assessment of such property in a separate portion of the tax list or assessment roll of said county under the head of "subsequent assessments," and that said assessor did duly deliver a true copy of the original assessment to the county auditor of Ormsby County; that such copy was by said auditor compared with the entries on the assessment roll and then filed by him with the clerk of the board of commissioners; that such list and subsequent assessment of defendants' property was duly equalized by the board of commissioners, sitting as a board of equalization,
13 and all the other requirements of law were duly performed in relation to such assessment as set forth in their original complaint.

Wherefore they ask judgment as prayed for in their original complaint against defendants.

PROSECUTING ATTORNEY
of Ormsby County, N. T.
THOMAS E. HAYDON, *of Counsel for Plaintiffs.*

Endorsed: Filed January 6th, 1864.

ALFRED HELM, *Clerk.*

Amended answer.

In the district court.

THE PEOPLE, &C.,
vs.
MANDLEBAUM & KLAUBER.

The defendants, for further answer to plaintiffs' complaint as amended herein, say on information and belief that the property described in the complaint was fraudulently and wrongfully assessed to them, and was not subject to taxation to them for the year 1862, because, they say, that the hay so described was a part of their growing crop for that year, produced from their ranch in Douglas County, and was not harvested or removed to this county until after the first Monday of August of that year and long
14 after they had been duly assessed for all property taxable in said county of Douglas, including said ranch, taxed at $9,000 or $10,000, and their said taxes fully paid thereon in that county to the collector thereof.

That of said extra amount of goods some $7,000 or $8,000 in value constituted their stock of goods at Genoa, in said county of Douglas, and was included in said assessment and payment of taxes in said county then consolidated with their stock in Ormsby County.

That the remainder of said extra amount of goods mentioned in the complaint was not the property in specie of the defendants, nor was the same

within the county of Ormsby until long after the defendants were assessed and their taxes paid in said Ormsby County, as set up more fully in their answer heretofore made, for the year 1862, and that said extra goods were purchased from the proceeds of their business houses in the counties of Ormsby and Douglas, the sale of their goods and other property and the proceeds of their business, all of which had been assessed in said counties and the taxes paid as aforesaid for the year 1862 and long before the making of the pretended assessment set up in the complaint.

That the timber, lumber, and improvements mentioned in the complaint were not made or manufactured or were they the property of the defendants until after the defendants were assessed and their taxes paid for the year 1862 as aforesaid, and that the same was had and made in the regular
15 course of their business and trade of that year.

WM. H. BRUMFIELD, *Att'y for Defendants.*

Verification.

NEVADA TERRITORY, *Ormsby County, ss:*

A. Klauber, being duly sworn, upon his oath says the foregoing answer is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

A. KLAUBER.

Subscribed and sworn to before me this 12th day of January, 1864.

ALFRED HELM, *Clerk.*

Endorsed: Filed January 12th, 1864.

ALFRED HELM, *Clerk.*

16 *Journal record entry.*

THE PEOPLE OF THE UNITED STATES IN THE TERRITORY of Nevada
vs.
F. MANDLEBAUM AND A. KLAUBER, COMPOSING THE FIRM of Mandlebaum & Klauber, defendants.

On motion of plaintiff, the court sets aside the order striking out defendants' answer and allowing judgment to plaintiff on default of defendants' proving the allegations of his answer. On motion of plaintiff, the court strikes out so much of defendants' answer as has no relation to the payment of taxes on $7,000 or $8,000 of property described in plaintiffs' complaint, which is alleged by defendants' answer to have been taxed in Douglas County. To this defense plaintiff filed his sworn replication, denying the allegations of defendants' answer. Thereupon the issue was tried by the court, the parties waiving in open court a jury. Plaintiff produced in evidence the delinquent list of Ormsby County for 1862, which was admitted by the court as evidence, to which defendants' counsel excepted. Defendant then offered in evidence a tax receipt of Douglas County, which, with other evidence, was considered by the court to show a payment of tax on $5,800 worth of the property taxed to defendants in this suit. It is therefore considered by the court that pl'ffs recover of def'ts the tax on $76,100 worth of property instead of $81,900, as charged in said complaint, amounting to
17 fifteen hundred and twenty-two dollars and costs of this suit, viz: fifteen per cent. on $1,522, equal to $228 30, and clerk's fees and sheriff's fees, amounting to $26.

To all of which defendants' counsel excepts.

Findings.

In 2nd judicial district court of N. T., in and for Ormsby County.

THE PEOPLE OF THE UNITED STATES IN THE TERRITORY of Nevada
vs.
F. MANDLEBAUM AND A. KLAUBER, COMPOSING THE FIRM of Mandlebaum & Klauber, defendants.

The court finds in this suit the following facts: that the allegations of plaintiffs' complaint as amended are true, and reference is hereby made to said complaint and amendments thereto for more full specifications of the hereby found in favor of plaintiffs.

The court finds that of the property assessed as set forth in plaintiffs' complaint the defendants were assessed *as set forth in plaintiffs' complaint the defendants were assessed* in Douglas County for the sum of $5,800 worth of property during 1862, and paid his taxes thereon, and that defendants are therefore entitled to a credit to that amount on their taxes in Ormsby County for the same year.

18 *Findings of the court.*

As a conclusion of law, the court finds that plaintiffs are entitled to a judgment of fifteen hundred and twenty-two dollars against defendants, and for costs of suit as allowed by law, viz: fifteen per cent. on $1,522, equal to $228 30, fees of district attorney and $26 00 clerk's and sheriff's fees, such judgment to be collected in gold and silver coin of the United States.

Judgment is ordered accordingly.

Judgment.

THE PEOPLE OF THE UNITED STATES IN NEVADA TERritory, pl'ffs,
vs.
F. MANDLEBAUM AND A. KLAUBER, COMPOSING THE FIRM of Mandlebaum & Klauber, def'ts.

In accordance with the findings of the court now on file in the above suit, is is ordered, adjudged, and decreed that the plaintiffs recover of the defendants in gold and silver coin of the United States currency, the amount of taxes found to be due by such findings, viz: the sum of fifteen hundred and twenty-two dollars and the costs of this suit taxed as follows, viz: district attorney's fees $228 30, clerk's and sheriff's fees $26 00, and that plaintiffs have execution against the property therefor.

Judgment rendered January 20th, 1864.

GEO. TURNER, *Judge 2nd Dist.*

19 *Notice of appeal.*

In the district court, second judicial dist., for Ormsby County, Nevada Territory.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF Nevada, pl'tffs,
vs.
F. MANDLEBAUM AND A. KLAUBER, defendants.

The plaintiffs and their attorney will take notice that the defendants appeal to the Supreme Court, from the judgment of the district court rendered in the above-entitled cause on the 20th day of January, 1864.

February 25, 1864.

WM. H. BRUMFIELD, *Att'y for Appellants.*

Service of the above notice by copy is accepted this Feb. 25th, 1864.

THOS. E. HAYDON,
Pros. Attorney for Ormsby County.

Endorsed: Filed February 25, 1864.

ALFRED HELM, *Clerk.*

20 *Undertaking on appeal.*

In the district court, 2nd judicial district, for Ormsby County.

THE PEOPLE OF THE UNITED STATES AND TERRITORY OF NEVADA
vs.
MANDLEBAUM & KLAUBER.

Whereas on the 20th day of January, 1864, the court aforesaid rendered a judgment for the plaintiffs and against the defendants in the above-entitled cause, for the sum of seventeen hundred and seventy-six 30-100 dollars, and the defendants have taken an appeal from such judgment to the supreme court of the Territory of Nevada:

Now, therefore, in consideration of the premises, and for the purpose of rendering such appeal effectual, we, C. H. Meyer, by occupation a merchant, and L. Price, by occupation a merchant, both residents of said county of Ormsby, undertake on the part of said appellants, in the sum of three thousand five hundred and fifty-two 60-100 dollars, and promise to the effect that that we are bound in the sum last aforesaid to the said plaintiffs, and if said judgment appealed from or any part thereof be affirmed, the said appellants shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages and costs which shall be awarded against said appellants upon the appeal.

Witness our hands this 26th day of February, A. D. 1864.

C. H. MEYER.
L. PRICE.

21 *Undertaking on appeal.*

NEVADA TERRITORY, *Ormsby County:*

C. H. Meyer and L. Price, the sureties to the above-named appellants, and who executed the above undertaking, being by me duly sworn, each upon his oath says he is a resident and of the occupation as specified in the undertaking, and is worth the amount in said undertaking over and above all his just debts and liabilities, exclusive of property exempt from execution.

C. H. MEYER.
L. PRICE.

Subscribed and sworn to this 21st day of Feb., 1864.

ALFRED HELM, *Clerk.*

Endorsed: Approved and filed February 26th, A. D. 1864.

ALFRED HELM, *Clerk.*

22 *Clerk's certificate in dist. court.*

TERRITORY OF NEVADA, *County of Ormsby, ss:*

I, Alfred Helm, clerk of the district court of the second judicial district in and for said Territory, do hereby certify that the foregoing is a full and true copy of the original pleadings and other papers required on appeal to the supreme court; also of the entries upon the journals of said court in the

case of the people, &c., *vs.* Mandlebaum & Klauber as the same appear now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this 30th day of March, A. D. 1864.

[L. S.] ALFRED HELM, *Clerk.*

23 *Judgment of supreme court, N. T., April session,* 1864.

THE PEOPLE OF THE UNITED STATES AND TERRITORY of Nevada, respondents,
vs.
F. MANDLEBAUM & A. KLAUBER, appellants.

This cause came up on appeal from the district court of the second judicial district in and for the county of Ormsby.

This cause being called on this day, and the same having heretofore been duly submitted on briefs by consent of the parties hereto and taken under advisement by the court, and all and singular the law and the premises here seen, heard, and considered, the opinion of the court is rendered by Turner, C. J., North, J., and Locke, J., concurring, to the effect that the judgment of the court below is affirmed.

Whereupon it is now ordered, adjudged, and decreed by the court that the judgment of the court of said second judicial district in and for Ormsby County be, and the same is hereby, affirmed.

Judgment rendered May 3d, 1864.

23½ *Undertaking on writ of error.*

Supreme Court of the United States.

FRANK MAUDLEBAUM AND ABRAM KLAUBER, plaintiffs in error,
vs.
THE PEOPLE OF THE UNITED STATES AND TERRITORY of Nevada, defendants in error.

Know all men by these presents that we, Frank Mandlebaum and Abram Klauber as principals, and John Cradlebaugh and George Muncton as surities, are held and firmly bound unto the above-named people of the United States and Territory of Nevada in the penal sum of four thousand dollars, to be paid to the said people of the United States and Territory of Nevada, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 7th day of July, A. D. 1864.

Now the condition of the above obligation is such that whereas the above-named Frank Mandlebaum and Abram Klauber have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of the Territory of Nevada, if the named Frank Mandlebaum and Abram Klauber shall prosecute said writ of error to effect, and answer to all damages and costs if
23¾ they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

F. MANDLEBAUM. [SEAL.]
A. KLAUBER. [SEAL.]
JOHN CRADLEBAUGH. [SEAL.]
GEO. MUNCKTON. [SEAL.]

Sealed and delivered in presence of.

TERRITORY OF NEVADA, *County of Ormsby, ss:*

John Cradlebaugh and George Munckton, the sureties on the above undertaking, being sworn, depose and say each for himself that he is a citizen and householder of said Territory, and that he is worth the sum of four thousand dollars over and above all his just debts and liabilities and property exempt from execution.

JOHN CRADLEBAUGH.
GEO. MUNCKTON.

Subscribed and sworn to before me this 7th day of July, A. D. 1864.

ALFRED HELM, *Clerk.*

JUDICIAL CHAMBERS, 2ND JU'L DIST., NEVADA TER'Y.

The within bond is accepted, its form approved, and sureties taken as sufficient, and approved.

GEO. TURNER, *Ch'f Jus., N. T.*

Endorsed: Filed July 12, A. D. 1864.

ALFRED HELM, *Clerk.*

24 *Certificate.*

TERRITORY OF NEVADA, *ss:*

I, Alfred Helm, clerk of the supreme court of Nevada Territory, do hereby certify the foregoing twenty-four pages, numbered from one to twenty-four, inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and of the papers and evidence on which decision was founded, as the same appear of record in my office in the case wherein F. Mandlebaum and A. Klauber are appellants and the people of the United States in the Territory of Nevada is appellee.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be affixed this 16th day of September, A. D. 1864, and of our independence the 89th.

[L. S.]

ALFRED HELM, *Clerk.*

Filed December 8, 1864.

Supreme Court of the United States.

No. 211.

F. MANDEBAUM AND A. KLAUBER, PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE UNITED STATES IN THE TERRITORY OF NEVADA.

In Error to the Supreme Court of Nevada Territory.

This was an action begun in the district court of Ormsby county, in Nevada Territory, and carried, by appeal, to the Supreme Court of the Territory, to recover taxes alleged to be due from the plaintiffs in error.

The territorial law applicable to the case is as follows, viz:

CHAPTER L.

An Act to provide for the assessing and collecting county and Territorial revenues, approved November 29, 1861.

SEC. 1. An annual *ad valorem* tax of forty cents upon each one hundred dollars value of taxable property, for territorial purposes, upon the assessed value of all property in this Territory not exempted by this act from taxation; and upon the same property the Board of Commissioners of each county is hereby, also, authorized and empowered to levy and collect annually a tax for county expenditures, not exceeding sixty cents on each one hundred dollars; and upon the same property the Board of Commissioners of each county is, also, hereby authorized and empowered to levy and collect annually such additional and special taxes as the laws of this Territory may authorize and require them to levy or collect.

SEC. 2. The Board of Commissioners of each county shall, prior to the first Monday of March, unless otherwise provided by law, annually assess the amount of taxes that shall be levied for county purposes, designating the number of cents which shall, on each one hundred dollars of taxable property, real or personal, be levied for each purpose, and shall add thereto the amount levied by law on each one hundred dollars of taxable property, real or personal, for either territorial or county purposes. All taxes levied under the provisions of this act shall be paid in the legal coin of the United States, or in foreign coin, in the value fixed for such coin by the law of the United States: *Provided, however*, That county taxes levied in accordance with the provisions of any special act may be collected in such funds as in such special act may be provided.

SEC. 13. Between the first Monday in March and first Monday in August, in each year, the county assessors, except otherwise required by special enactment, shall ascertain by diligent inquiry and examination all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms owning, claiming, or having the possession or control thereof, and he shall then determine the full cash value of all such property, and shall list and assess the same to the person, corporation, &c., owning or having the possession, charge, or control thereof.

SEC. 19. The assessor and his sureties shall be, and they are hereby, made liable for the taxes on all taxable property within the county which is not assessed through his neglect.

SEC. 21. On or before the first Monday in August, in each year, the assessor shall complete his tax list or assessment roll, and shall attach his certificate thereto and deliver it and the map book and all the original lists of property given to him to the clerk of the Board of Commissioners.

SEC. 22. It shall be lawful for the assessor, at any time subsequent to the first Monday in August and prior to the last Saturday in October, in each year, to assess any property which shall not be on the regular list, and he shall enter such assessment in a separate portion of the tax list or assessment roll, under the head of "subsequent assessments," &c.

The complaint averred, that between the first Monday of March and the first Monday of August, A. D. 1862, the defendants (below) were assessed, (as required by section 13th aforesaid,) for—1. Goods in store, occupied by them on Car

son street, in Carson city, $70,000; 2. Twenty tons of hay, $800; 3. Goods in store at Kinkead and Harringtons, $6,500; 4. Lumber and timber, $600; 5. 100 tons of hay $4,000; on which was levied for the fiscal year 1862, a federal tax of $81.90, a territorial tax of $327.60, and a county tax of $1,228.50.

The original answer averred, in substance, that the defendants had been legally assessed for all their property, and had paid all the taxes due from them for the year 1862, and a supplemental answer denied that there ever was any such assessment as alleged.

The plaintiffs then shifted their ground, and in an amended complaint, claimed upon a subsequent assessment, made between the first Monday in August and the last Saturday in October, 1862, in pursuance of section 22d of the act aforesaid.

To this defendants replied that the property was not subject to taxation, because: 1. The hay was part of the growing crop produced from their ranch in Douglas county, and was not harvested or removed into Ormsby county until after the first Monday of August, 1862, and after they had been assessed for all their property, including said ranch in Douglas county; 2. Of the extra amount of goods, some $7,000 or $8,000 in value had been included in the assessment and payment of taxes in Douglas county; 3. The remainder was bought from the proceeds of their business houses in the counties of Douglas and Ormsby, &c., all of which had been assessed and the taxes paid for the year 1862, long before the pretended assessment alleged in the complaint; 4. The timber, lumber, &c., were not made or owned by defendants until after they were assessed and their taxes paid for the year 1862, and were had and made in the regular course of their business and trade of that year.

The court, on motion of the plaintiffs, and, as it seems, without notice to defendants, *struck out all of the answer except that part relating to the* $7,000 or $8,000 *worth of goods;* and issue being taken on that part, and it being submitted to the court, they found that the defendants had been assessed for and paid taxes on goods of the value of $5,800, part of the property aforesaid, and were entitled to a credit to that amount on their taxes in Ormsby county, and gave judgment for $1,522, being the tax on the rest of the property of the assessed value of $76,100, instead of $81,900, as claimed, and costs, *such judgment to be collected in gold and sil-*

ver coin of the United States. This judgment was rendered on the 20th of January, 1864, and, on appeal to the supreme court of the Territory, was affirmed on the 3d of May, 1864.

The error assigned in the judgment of the supreme court of the Territory, is the affirmance of the judgment of the district court, which should have been reversed for several errors:

I.

The striking out of the principal part of defendant's answer was erroneous.

The proceeding was *ex parte*, without notice to the other side, and unwarranted by any principle of law.

But it was erroneous principally because the answer set forth a valid defence. Section twenty-second of the act of 1861 authorizes the assessor, after the first Monday of August, to assess property which shall not be on the regular list. This refers to property in existence and taxable, but omitted from the regular list from accident or other similar cause. It does not apply to property newly acquired, and newly brought into the county after the regular assessment has been made. Still less does it apply to property which is the product or proceeds of that already assessed and taxed; otherwise parties would be subject to double tax. Yet the answer in the case averred as to the property charged, that it was all the yield, product, or proceeds of property and business heretofore regularly assessed and paid for, and was also acquired, made, manufactured, or realized after the regular legal assessment of all the defendant's property was made and the taxes paid on it.

The act of striking out the answer was equivalent to a judgment on demurrer to the answer in favor of the plaintiffs, and was erroneous, if the defence was valid.

II.

But there are other errors apparent on the record. The act of 1861 only authorizes the county commissioners to levy a tax of sixty cents on every hundred dollars' value of property; whereas the tax for which this suit was brought was $1 50 on every hundred dollars, *i. e.*, $1,228 50 on $81,900.

The levy for county purposes, therefore, was void, and be-

ing the principal part of the cause of action, the judgment was wholly erroneous.

Again there was no levy by law, and no authority given by law to the county commissioners to make the levy of a territorial tax. The act of 1861 is defective in this respect, and, from oversight, omitted to make any provision on the subject. The levy of the territorial tax, therefore, was also void.

It may be objected that these defences were not made specially in the district court, and cannot be relied on now. But on error, the Court must look through the whole record, and reverse for error apparent therein; and this error is apparent on the face of the pleadings in the plaintiffs' own statement of their case. It cannot therefore be overlooked. (See Bennett *vs.* Butterworth, 11 Howard, 669.)

III.

The judgment of the district court was erroneous in being rendered for gold and silver coin of the United States currency.

The obligation to pay the tax, if a subject of suit, as it is treated in this case, is *a debt*, and falls within the act of Congress of February 25th, 1862, making the Treasury notes, issued in pursuance of it, a legal tender in payment of debts. The judgment was in direct conflict with the act, as, in requiring payment in coin, it denied the right of paying in legalized paper currency.

W. S. Cox
Nath'l Wilson
of Counsel for Defendants in Error